**FARAD CONTINUATION SHEET NO.**

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4540 OF 2005

| Office notes, office Memoranda of appearances, Court's orders or directions & Registrar's orders. | Court's or Judge's Orders |
|---|---|

Mr. J.. Puranik for the petitioner.

None for the respondent.

**CORAM: SMT. RANJANA DESAI, J.**

**DATED: 13TH SEPTEMBER, 2005.**

**P.C.**:-

In this writ petition, order dated 3/3/2005 passed by the Addl.District Judge, Kalyan, rejecting the application of the plaintiff for amending the plaint is under challenge. The learned judge while rejecting the application has observed that the original plaint is for relief of possession on the basis of title allegedly acquired by the plaintiff under the sale deed dated 3/4/1986 and the foundation of the same has already

been pleaded in the plaint. He has further observed that the amendment sought is not concerning any other fact but the fact as to acquisition of title. He has further observed that by the proposed amendment, the fact as to acquisition of title is sought to be elaborately contended. He has further observed that the amendment sought is in the form of evidence that the plaintiff desired to adduce and such amendment cannot be allowed.

In my opinion, the reasoning of the learned judge is proper. By the amendment, the plaintiff is only seeking to bring on record certain evidence in support of facts which have already been pleaded. The amendment of this nature at the appellate stage cannot be allowed and the application has been rightly rejected. I am, however, informed by the learned counsel for the petitioner that an application for production of additional evidence is filed by the petitioner in the lower appellate court and the lower appellate court

has directed that it shall be heard along with the appeal. If that is so, the lower appellate court shall at the time of hearing of the appeal give due consideration to the said application and, then proceed to dispose of the appeal. Petition is rejected.

(SMT. RANJANA DESAI, J.)